

STATE OF MICHIGAN
COURT OF APPEALS

In re ALEXIE, Minors.

UNPUBLISHED
April 19, 2016

No. 329817
Macomb Circuit Court
Family Division
LC No. 2013-000110-NA

Before: JANSEN, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood that child will be harmed if returned to parent).¹ We affirm.

In April 2013, the court assumed jurisdiction over the children, based on the no-contest plea of the children's mother, because the parent's home was deemed deplorable and unsafe, and the parents lacked the financial ability to care for their children.² At disposition in May 2013, the court ordered the children to remain in their parents' care, as the conditions of the home had improved and the parents were participating in services. But by July 2013, the conditions of the home had deteriorated again. The children were removed from the home and placed with relatives.

In April 2015, a petition requesting termination of respondent's parental rights to the children was filed on the basis of his failure to benefit from substance abuse and mental health treatment, and his failure to maintain housing and income. Following a hearing, the trial court entered an order terminating respondent's parental rights, and this appeal followed.

Respondent first argues that the trial court erred in finding statutory grounds to terminate his parental rights under MCL 712A.19b(3)(g) and (j). We disagree.

¹ The parental rights of the children's mother were also terminated based on her voluntary release.

² Respondent entered a no-contest plea in January 2015, and an order of adjudication was entered for him pursuant to *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014).

We review for clear error a trial court's factual findings and ultimate determination that a statutory ground for termination was proven. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding of fact is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *Id.*

In order to terminate a respondent's parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). Only one statutory ground needs to be established to support termination of a respondent's parental rights. See *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the children must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Termination of respondent's parental rights was based on MCL 712A.19b(3)(g) and (j), which permit termination of parental rights under the following circumstances:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

In terminating respondent's parental rights under MCL 712A.19b(3)(g), the referee noted that respondent had been offered numerous services since the children were removed, but he failed to complete substance abuse treatment, failed to provide required drug screens, and lacked progress in therapy. The referee further noted that respondent lacked appropriate housing and transportation, and he failed to demonstrate an ability to provide for his children financially. The referee felt that there had not been much change in respondent's ability to care for his children and that affording him more time would not be beneficial to the children. In basing termination on MCL 712A.19b(3)(j), the referee noted that respondent showed an inability to provide for himself and make proper arrangements for his own needs. The referee also noted respondent's lack of suitable housing and consistent income, and his failure to complete therapy. The referee further noted that there were bonding issues with one of the children, and there was a risk of emotional harm. The referee further stated that there was still a risk of environmental neglect and that respondent acknowledged he could not currently care for his children

The trial court did not clearly err in finding that these statutory grounds were established by clear and convincing evidence. Termination of respondent's parental rights under MCL 712A.19b(3)(g) and (j) was justified because, although respondent participated in some services and made some progress, he failed to fully participate in recommended drug screening, was terminated from his therapy due to noncompliance, never obtained suitable and stable housing, and was not consistently employed while this case was pending. Although respondent testified that he was employed at the time of the termination hearing, he had a history of sporadic employment for short periods. Respondent was living with a woman and her grandfather at the time of termination, and the home was found to be inappropriate since the woman's parental rights to her children had been terminated and she had a history of substance abuse. Respondent was advised against moving into the home, but he did so anyway. Respondent acknowledged that his current living situation was not appropriate for the children, and he had yet to move at the time of termination.

Further, those most familiar with the case felt that respondent was unable to care for his children and would not be ready to do so any time soon. The current caseworker opined that respondent could not provide proper care and custody for his children within a reasonable time frame, pointing to concerns about his emotional instability, lack of appropriate housing, and struggle to care for his own daily needs. She felt that the children would be at risk if returned to respondent's care because respondent would have difficulty coping with the needs of two small children on a daily basis. The former foster care worker also felt that respondent was not able to provide proper care and custody for his children and would not be able to do so in a reasonable time, citing respondent's inability to obtain housing, failure to maintain employment, and difficulty in managing himself independently. While the foster parent acknowledged respondent's ability to care for his children during visits, she did not think he could provide physically and financially for his children, and did not think he would be able to do so even in a year or two. Given this evidence, the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(g) and (j).

Respondent next argues that the trial court erred in determining that termination of his parental rights was in the best interests of the children. We disagree.

This Court also reviews the trial court's best-interest determination for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). In deciding a child's best interests, a court may consider " 'the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home.' " *White*, 303 Mich App at 713, quoting *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *White*, 303 Mich App at 714. The trial court should weigh all available evidence to determine the child's best interests. *Id.* at 713. Because under MCL 712A.19a(6)(a), a child's placement with relatives weighs against termination, the court must explicitly consider the fact that a child is living with relatives when determining whether termination is in the child's best interests. *Olive/Metts*, 297 Mich App at 43. "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id.*

The trial court did not clearly err in determining that termination of respondent's parental rights was in the children's best interests. Although the evidence established that respondent was bonded with his children, caseworkers and the foster parent felt that termination of respondent's parental rights was in both children's best interests because of the children's need for stability, permanency, and structure. The children were in a placement with their paternal aunt and were doing well in her care. The referee noted this relative placement and that the paternal aunt was interested in planning permanently for the children, but had testified that she refused to participate in a guardianship. The referee stated that the children were comfortable and adjusted in their aunt's home and looked to her for caregiving and comfort. Respondent had not obtained suitable housing or stability in employment while this case was pending, and there were concerns about his ability to provide day-to-day care for his children. For the foregoing reasons, a preponderance of evidence established that termination of respondent's parental rights was in the children's best interests, and the trial court did not clearly err in its determination. See *White*, 303 Mich App at 713-714; *Olive/Metts*, 297 Mich App at 43.

Respondent next argues that termination was inappropriate because petitioner failed to make reasonable reunification efforts, failed to take his Attentional Deficit Hyperactivity Disorder (ADHD) into account when providing services to him, and made no accommodations to address this disability. We disagree.

Respondent argues that petitioner's reunification services were generally deficient in the areas of housing, employment, transportation services, and visitation. Respondent failed to object below or indicate that the services provided to him were inadequate, and this issue is therefore unpreserved. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Unpreserved issues are reviewed for plain error affecting substantial rights. See *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Reasonable reunification efforts must be made to reunite the parent and child unless certain aggravating circumstances exist. *Mason*, 486 Mich at 152; *Frey*, 297 Mich App at 247; MCL 712A.19a(2). If the agency fails to take into account the parent's limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family. *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). However, while the agency has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of a respondent to participate in the services that are offered. *Frey*, 297 Mich App at 248.

Although respondent suggests that petitioner should have made more and different types of efforts because of his ADHD, the record shows that respondent was provided much support while this case was pending. Respondent participated in the Substance Abuse Support Program (SASS) for over a year, and that program provided in-depth support services to respondent. Respondent also received assistance with basic daily living skills from his therapist. Respondent has not identified any available services that would have assisted him further, and the record simply does not support his claim that the agency failed to offer other available services geared toward his disability. Further, the caseworker explained that the agency made all necessary referrals for respondent to succeed on his treatment plan. Regarding housing, respondent received assistance from SASS, and the agency also provided housing referrals. Regarding employment, the agency provided a referral to Michigan Rehabilitation Services, SASS wrote

respondent's resume, and respondent's therapist assisted him with turning in job applications. Regarding transportation, respondent was provided with bus tickets, passes, and gas cards, and he was also transported to services. Although respondent was never offered unsupervised visits, the caseworkers explained that respondent never made sufficient progress to recommend those. While respondent asserts petitioner hindered his progress by requiring drug screens, he acknowledged marijuana use during his psychological evaluation, and drug screening was recommended to determine if respondent was substance free. The fact that he submitted a screen that was positive for marijuana in January 2014 and failed to regularly submit to drug screens justified continued drug screening to assess his status. Given the above, we cannot conclude that petitioner failed to make reasonable reunification efforts, and respondent has not established any plain error affecting his substantial rights.

Affirmed.

/s/ Kathleen Jansen
/s/ Deborah A. Servitto
/s/ Michael J. Kelly